

DOMESTIC RELATIONS COMMITTEE

Amended Meeting Minutes – June 18, 2004

PRESENT:

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CO-CHAIRS:

Hon. Mark Anderson, Co-Chair

Hon. Karen Johnson, Co-Chair

MEMBERS:

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Hon. Karen Adam

Hon. David Bradley

Hon. Bill Brotherton

Jodi Brown

Sidney Buckman

Kat Cooper

Frank Costanzo (designee David Weinstock)

William Fabricius

Hon. Beverly Frame

Nancy Gray

Bill Hart

Terrill J. Haugen

Karen Kretschman

Ella Maley

Hon. Dale Nielson

David Norton

Steve Phinney

Ellen Seaborne (designee Annette Burns)

Kelly Spence

Judy Walruff

Steve Wolfson

Debbora Woods-Schmitt (designee Jeri Auther)

Brian Yee (designee Joel Glassman)

Jeff Zimmerman

GUESTS:

Julianna Koob

Allie Bones

Sarah Pequignot

Paul Anderson

AZ Coalition Against Domestic Violence

Governor's Office

Attorney General's Office

Parent

STAFF:

Isabel Gillett

Barbara Guenther

Megan Hunter

Marianne Yamnik

Administrative Office of the Courts

Senate

Administrative Office of the Courts

House of Representatives

Senator Anderson called the meeting to order at 10:10 a.m. without a quorum present.

APPROVAL OF MINUTES

Due to the lack of a quorum, approval of the minutes was postponed until a quorum could be reached.

ANNOUNCEMENTS

Members took turns introducing themselves. Jeri Auther, parent, served as Debbora Woods-Schmitt's designee. David Weinstock, therapist, served as Frank Costanzo's designee. Joel Glassman, custody evaluator, served as Brian Yee's designee. Annette Burns, family law attorney, served as Ellen Seaborne's designee. Representative Johnson is absent due to illness.

Steve Phinney and Frank Costanzo have both resigned from the Committee due to other commitments. Both served the Committee faithfully and were thanked for their contributions.

The custodial parent position appointed by the House Speaker is still vacant.

Senate President Bennett appointed Jodi Brown of Prescott to serve as the Domestic Relations Mediator. She replaces Jennifer Jordan.

Megan Hunter mentioned that copies of the newly adopted Child Support Guidelines, effective January 1, 2005, are available upon request. Also available is a copy of the old Domestic Relations Reform Study Subcommittee (DRRSS) timeline. Megan also searched for the letter sent by Senator Hartley and Representative Johnson to all legislators a few years ago that urged them to pass all domestic relations-related legislation through the DRRSS. Senator Brotherton mentioned that his secretary formerly worked for Senator Hartley and may have retained a copy of the letter.

LEGISLATIVE UPDATE

Barbara Guenther reviewed the domestic relations-related bills that passed this year and were signed by the Governor. The effective date for these bills is August 25, 2004.

HB 2090 – Stipulates that if a marital relations petition does not result in a decree of dissolution of marriage, legal separation or annulment, a loan secured by mortgage or deed of trust executed by one party to the marital relations action after service of the petition continues to be secured by the real property.

HB 2346 – Expands notification requirements regarding taxpayers with delinquent spousal maintenance obligations and authorizes the release of confidential taxpayer information to the clerks of court.

HB 2348 – Discussed below.

SB 1156 – Permits child support to be ordered retroactively to the date of separation, up to three years prior to filing for dissolution of marriage if the parties lived apart during this time.

SB 1332 – The existing Uniform Interstate Family Support Act is repealed and replaced with amendments recommended by the National Conference of Commissioners on Uniform State Laws.

SB 1334 - Permits an obligor of child support to apply to the Clerk of the Superior Court for reimbursement of overpayment of child support within 24 months of termination of a child support order. Allows the court to enter a civil judgment against the obligee who has received the overpayment if both the child support order has been terminated and all arrearages and interest have been paid.

HB 2348 – Requires the DR Committee to develop minimum training standards by December 30, 2004 which would go into effect on July 1, 2006. The bill's provisions include:

- Allows the court, when determining disposition of property in a proceeding for dissolution of marriage, legal separation or annulment, to consider actual damages and judgments resulting from a criminal conviction of a spouse in which the other spouse or the child was the victim.
- Allows the court to impress a lien on the separate property of either party or the marital property awarded to either party to secure the payment of actual damages and judgments resulting from criminal conviction of a spouse when the other spouse or the child was the victim.
- Allows the court to grant a spousal maintenance order for actual damages and judgments resulting from the criminal conviction of a spouse in which the other spouse or the child was the victim.
- Prohibits the court from granting physical or legal custody of a child to a registered sex offender or a person convicted of murdering the other parent of the child, unless the court finds, in writing, that there is no significant risk to the child.
- Allows the court to consider evidence that the convicted parent suffered trauma due to domestic violence by the murdered parent when determining risk to the child.
- Allows the court to order parents to pay for investigations, reports or family court advisors allocated between parents based on their financial circumstances.
- Requires anyone who conducts an investigation or prepares a report concerning custodial matters to receive 12 initial hours and 4 subsequent hours every two years of training on domestic violence and child abuse.
- Requires the DR Committee to prescribe minimum training requirements for custody evaluators on domestic violence and child abuse by December 31, 2004 and allows annual modifications approved by the Committee.

- Requires the Committee to establish a working group of persons interested in making recommendations to the Committee by November 30, 2004.
- Requires implementation of training standards by July 1, 2006.
- Adds two senators and two representatives to the DR Committee, no more than two from each body from the same political party.
- Eliminates the requirement for custody evaluators to receive training from specific groups.

A quorum was reached at 10:28 p.m.

MINUTES

MOTION: Dave Norton made a motion to approve the minutes of the April 16, 2004 meeting. Dave accepted an amendment to add Karen Kretschman to the attendance list. Second by Karen Adam. Approved unanimously.

HB 2348 Continued from previous section

Bill Hart suggested that DRC members could get together and decide amongst themselves what kind of disciplines need to be present to develop a fair and balanced committee, and then invite people from those disciplines to join the workgroup. He also suggested that the committee should have regularly monthly meetings separately from the DRC lunchtime meetings.

Sid Buckman would like the group to consider input from the whole state, including Hispanics and Native Americans to provide a fair and balanced group.

Senator Anderson would like the meetings to be held separately from DRC meetings and bring in outside experts with an objective chairman who can provide balance and fairness.

Barbara said that for this particular session, session law allows this workgroup to appoint anyone it wants to membership.

Members inquired whether the minimum training standards could be placed on physicians who conduct evaluations. Barbara clarified that even though the DR Committee will prescribe minimum standards, they cannot override the law that exempts physicians. Members suggested that it would be irresponsible not to include physicians who do custody evaluations.

Sen. Anderson called for volunteers. The following DRC members volunteered to serve on the workgroup:

Sid Buckman
Nancy Gray
David Bradley
Jeri Auther
David Weinstock

Karen Kretschman
Bill Hart
Bill Fabricius
Joel Glassman

Megan will ask absent members if they wish to volunteer also. Members should read the materials prior to the first meeting.

Kat suggested that Nancy serve as co-chair of the workgroup. Sen. Anderson appointed Nancy as co-chair.

Due to time constraints, the group will discuss only the domestic violence and child abuse issues. Other training areas could be considered in the future.

CUSTODY EVALUATOR TRAINING

Superior Court Cases

In past Domestic Relations Committee meetings, members discussed the need for valid statistics and more information about the data being used to support the need for a particular bill for purposes of shaping sound policy. Diana Hegyi from the Conciliation Court, Superior Court in Maricopa County was invited to this meeting to give a presentation regarding cases in which the courts allegedly granted custody to parents where there were concerns about domestic violence as reported by the Arizona Coalition Against Domestic Violence (Coalition). Ms. Hegyi outlined the cases as stated in the Coalition's report. She then outlined the facts from the court files. The presentation showed many various discrepancies between the two.

Domestic Violence Statistics

The legislative session brought to the forefront the need for better statistics on domestic violence in Arizona. Karen Kretschman discussed domestic violence statistics available through the Administrative Office of the Courts (AOC) which includes numbers of filings for Orders of Protection, number of review hearings requested, and number of requests for emergency Orders of Protection. The AOC Research & Statistics Unit collects and reports these numbers in a data book annually. The AOC maintains a Court Order Protective Repository which is a module within the court's statewide computer system. The courts report additional information in that system which is then transmitted to the Department of Public Safety and to the national NCIC system. The system is two years old and was developed with VAWA grant funds.

WORKGROUP REORGANIZATION

A new workgroup was formed to re-write A.R.S. § 25-403 in an attempt to make it more user-friendly. The statute has become unwieldy and needs to be recognized. This workgroup will not be making substantive changes to the statute.

Sen. Anderson appointed Steve Wolfson to chair the group. Those volunteering to serve on the workgroup are:

Karen Adam
David Weinstock

An idea discussed at the prompting of "Call to the Public" testimony at a previous meeting focused on creditor issues in divorce cases. Sen. Brotherton commented that if the banking industry is not on board, the bill would likely be killed. It is likely to be a tough issue.

Sen. Anderson suggested that members should contact Megan if they wish to work on this issue. Megan will contact Ellen Seaborne to see if she wants to pursue the issue and serve as chairman if a workgroup is formed.

CALL TO THE PUBLIC

Paul Anderson, Parent. Mr. Anderson is a custodial parent with 50% shared custody. He presented his observations about the shortcomings in the domestic relations litigation process and suggested that the courts should create separate Rules of Procedure for domestic relations cases. He hopes this would promote a gentler, easier experience for parties in domestic relations cases. As it now stands, domestic relations litigation is usually contested and decimates finances and damages families emotionally. He suggested that legislation provide for routine discovery. It is often abused in DR cases. He also suggested early referral to a family court advisor. Often, dangerous situations exist and the case is referred to the family court advisor near the end of the case.

Annette Burns explained that the Arizona Supreme Court does have a committee addressing his very concerns. Steve Wolfson explained that the Family Court in Maricopa County Superior is undergoing a review and perhaps his comments could be submitted for that review. Megan will provide him with contact information for both.

Julianna Koob, Arizona Coalition Against Domestic Violence. Ms. Koob wants to provide a point of clarification regarding Diana Hegyi's presentation. It was from the Battered Mother's Testimony Project. Julie started two months after the person who created that project left and Julie says she has never referred to that project. The 25-50 families that she has been referring to and that have brought this information forward are not from the Battered Mother's Testimony Project. Julie stated that she has asked for the data herself within the Coalition Against Domestic Violence on that project and it is sealed and confidential and even she cannot get it as an employee. She wanted to make sure that the Committee knows that the Coalition Against Domestic Violence was not using the Battered Mother's Testimony Project to bring this legislation forward. She mentioned that Diana's presentation should not be made part of the public record due to privacy concerns. She offered a binder of research and information if Committee members would like to see it. She has resigned from the Coalition Against Domestic Violence and will be moving to New Mexico soon.

BREAK/LUNCH

The Committee dismissed for lunch at 12:00. The meeting reconvened at 1:16 p.m.

WORKGROUP REPORTS

Education/Prevention

Terrill Haugen reported that the workgroup is headed in the direction of doing a pilot project with Dr. Irwin Sandler, ASU. This would be an option for the children of parties involved in high conflict cases, probably here in Maricopa County, to be involved in a program to help them through that tough situation. The proposal is set up to get funding from local and national organizations instead of asking the courts or legislature for funding. A joint planning committee

of representatives of the family court, DR Committee, ASU and other key stakeholders is being formed and they would like to have the program going within the next six months.

Comm. Adam mentioned that she had run this idea past her Family Court Presiding Judge with the intent of possibly hosting the program in Pima County. The Family Court bench there is excited about the prospect and would like to be considered as a host site. Terrill will discuss this with Dr. Sandler and report back at the next meeting.

Terry asked for a recommendation from the Committee.

MOTION: Terrill Haugen made a motion for the DR Committee to collaborate with Dr. Sandler and the Superior Court in Maricopa County to develop and implement a pilot project for children's divorce education.

Discussion: Dave Norton asked if this proposal is a collaboration with Dr. Sandler. Terrill responded that it is a collaboration. Bill Hart would like the Maricopa language to be taken out. Sid Buckman asked what the DR Committee's role would be. Terrill responded that this is still open. Comm. Adam suggested leaving it open to all counties. Nancy suggested that the DR Committee should be involved in this project on a detailed level. Dave Norton suggested the possibility of two pilot sites.

AMENDED MOTION: Terrill Haugen amended his motion to the following: The DR Committee will collaborate with Dr. Sandler and one or more pilot project counties to develop and implement a pilot project for children's divorce education. Dave Norton seconded. Approved unanimously.

Court Procedures

Nancy Gray reported the following:

1. This Committee has not received a response to the letter sent to the Maricopa and Pima Trial Court Commissions.
2. The workgroup has identified three areas they will study:
 - a. Going back to the commission to do a presentation in the fall where Dave Norton will give a presentation about the family bench situation.
 - b. Beverly Frame is going to speak with the Governor's office about the same.
 - c. Steve Wolfson will set up a meeting to speak with the State Bar Board of Governors. Megan will provide him with copies of the letters previously sent to the Pima & Maricopa Commissions.

Substantive Law

Bill Fabricius reported that due to low attendance, the Substantive Law workgroup did not meet and had nothing to report.

INTEGRATED FAMILY COURT

Karen Kretschman reported on the IFC Pilot Projects:

1. Pinal County - Nothing new to report.
2. Coconino County – The Board of Supervisors member who formerly supported the IFC project is now waffling on that support.
3. Maricopa County – Nothing new to report.

CALL TO THE PUBLIC

No requests were received for the Call to the Public.

NEXT MEETING

The next meeting will be held on July 16, 2004, 10:00 am – 2:00 pm at the Judicial Education Center, 541 E. Van Buren, Phoenix.

ADJOURNMENT

The meeting was adjourned at 1:43 p.m.